Chia Siew Li v Liew Khey Cheong (as administrator of the estate of Liew Fatt Cheong, deceased) & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02-1020 OF 2008
LOW HOP BING, ABDUL MALIK ISHAK AND T SELVENTHIRANATHAN JJCA
27 AUGUST 2009

Succession — Distribution of estate — Intestacy — Deceased died intestate — Whether plaintiff spouse of deceased — Whether entitled to one half of estate — Whether permissible to interpret earlier Act of Parliament by reference to later Act of Parliament — Distribution Act 1958 s 6(1)(b) — Law Reform (Marriage and Divorce) Act 1976 ss 22 & 27

Words and Phrases — Spouse, meaning of — Whether permissible to interpret earlier Act of Parliament by reference to later Act of Parliament — Distribution Act 1958 s 6(1)(b) — Law Reform (Marriage and Divorce) Act 1976 ss 22 & 27

The plaintiff first met Liew Fatt Cheong ('the deceased') in August 2002 and became intimate with him sometime in December 2002. Their relationship steadily developed from then on and led to their joint purchase of an apartment in October 2004. In 2005, the deceased set up two businesses in the plaintiff's name. The plaintiff and deceased then applied for the registration of their marriage at the Gombak National Registration Department and received a letter from the department confirming the date for registration of their marriage to be 26 May 2006. However, on 16 May 2006, the deceased unexpectedly died of a heart attack. There was no customary marriage contracted between the plaintiff and the deceased and the nearest to establish the customary marriage was the comb-breaking ceremony at the wake, which according to the plaintiff signified that she was entitled to 'break free'. The deceased died intestate and the first defendant obtained the letters of administration in which he was appointed the sole administrator of the deceased's estate, while the second defendant was the sole beneficiary. The plaintiff sought a declaration that she was entitled to one-half of the estate of the deceased pursuant to, inter alia, s 6(1)(b) of the Distribution Act 1958 ('the 1958 Act'). The plaintiff's originating summons application for a declaration was dismissed with costs by the High Court and hence the present appeal. The plaintiff cited authorities to support her submission that the word 'spouse' should be construed 'on the facts of each case to ensure that justice was done' and contended that on the facts of this

case she was the spouse of the deceased as required under s 6(1)(b) of the 1958 Act. The defendants replied that the authorities relied on by the plaintiff revealed the existence of a customary marriage while in the instant appeal there had never been a marriage at all be it customary or statutory. The defendants submitted that the plaintiff was not a spouse since she was unable to show that her marriage to the deceased was solemnised and registered pursuant to ss 22 and 27 of the Law Reform (Marriage and Divorce) Act 1976 ('the 1976 Act'). The plaintiff contended that in construing s 6(1)(b) of the 1958 Act, the provisions of s 22(4) and 27 of the 1976 Act were inapplicable, while the defendants maintained that the provisions of the 1976 Act were applicable. The issues to be determined in this appeal were whether in ascertaining the meaning of the word 'spouse' in s 6(1)(b) of the 1958 Act, which was an earlier Act of Parliament, the court was entitled to import and apply the provisions of ss 22(4) and 27 of the 1976 Act, which was a later Act of Parliament and whether the plaintiff was entitled to one half of the estate of the deceased.

Held, dismissing the appeal with costs:

(1) (per **Low Hop Bing JCA** and **Abdul Malik Ishak JCA**) The conditions under which a later Act may be resorted to for the interpretation of an earlier Act are strict: both must be laws on the same subject, and the part of the earlier Act which it is sought to construe 'must be fairly and equally open to diverse meanings'. However, it was abundantly clear that the 1958 Act and the 1976 Act were enacted for different subject matters. Additionally the word 'spouse' in the 1958 Act was not 'fairly and equally open to diverse meanings'. Hence the two strict conditions set out for resorting to a later Act to interpret an earlier Act had not been met. As such, the provisions contained in ss 22(4) and 27 of the 1976 Act were not useful aids to the interpretation of the word 'spouse' in the 1958 Act (see paras 22, 23, 32, 55, 56 & 62).

(2) (per **Low Hop Bing JCA**) The couples in the authorities relied upon by the plaintiff had in fact contracted a customary marriage, which was a fundamentally important fact absent in the instant appeal. As such, those authorities were readily distinguishable and not helpful to the plaintiff. In the instant appeal, the plaintiff and the deceased had shared a relationship that had later prompted them to become joint applicants to be registered as husband and wife, but they had not entered into a marriage. It is germane that there must be a marriage before a woman can qualify as a wife or spouse. Further, in the absence of expert evidence it was difficult to determine whether the comb breaking ceremony at the wake of the deceased could have constituted a customary marriage between the plaintiff and the deceased. On the facts and the law, the plaintiff and the deceased had never been constituted as husband and wife and thus the plaintiff was outside the ambit of the

word 'spouse' in s 6(1)(b) of the 1958 Act and not entitled to one-half of the estate of the deceased (see paras 38–40, 45).

(3) (per **Abdul Malik Ishak JCA**) In the instant appeal the use of dictionaries and other literary sources would be useful in interpreting the word 'spouse'. From the definitions provided in these sources it was obvious that the plaintiff did not qualify to be a 'spouse' of the deceased. There was no marriage in the legal sense of the word between the plaintiff and the deceased. Even though the plaintiff had not succeeded in this appeal she had been justly rewarded by the deceased (see paras 63–68, 71 & 77).

(4) (per **Selventiranathan JCA**) Under the 1976 Act all marriages among non-Muslims entered into after that date had to mandatorily conform with the provisions of that Act in order to be recognised as a valid marriage in law and consequentially as conferring the status of spouse on a party to that marriage. As the plaintiff had not become the wife of the deceased pursuant to the 1976 Act she did not qualify as a spouse of the deceased for the purposes of the 1958 Act (see paras 81 & 84).

[Bahasa Malaysia summary

Plaintif pertama kali bertemu dengan Liew Fatt Cheong ('si mati') pada bulan Ogos 2002 dan menjadi rapat dengannya sekitar bulan Disember 2002. Hubungan mereka semakin berkembang sejak itu dan membawa kepada pembelian bersama sebuah apartmen dalam bulan Oktober 2004. Pada tahun 2005, si mati telah memulakan dua perniagaan atas nama plaintif. Plaintif dan si mati kemudian telah memohon untuk pendaftaran perkahwinan mereka di Jabatan Pendaftaran Negara Gombak dan menerima surat daripada jabatan itu mengesahkan tarikh pendaftaran perkahwinan mereka adalah pada 26 Mei 2006. Walau bagaimanapun, pada 16 Mei 2006, si mati tanpa disangka telah meninggal dunia kerana diserang sakit jantung. Tiada perkahwinan adat resam berlangsung antara plaintif dan si mati dan yang paling hampir bagi membuktikan perkahwinan adat resam itu adalah upacara mematahkan sikat pada masa penghormatan si mati, yang mana menurut plaintif menandakan yang dia berhak 'dilepaskan'. Si mati telah meninggal dunia tak berwasiat dan defendan pertama telah memperoleh surat pentadbiran yang mana dia telah dilantik sebagai satu-satunya pentadbir harta pusaka si mati, manakala defendan kedua adalah satu-satunya benefisiari. Plaintif telah memohon deklarasi bahawa dia berhak kepada separuh daripada harta pusaka si mati menurut, antara lain, s 6(1)(b) Akta Pembahagian 1958 ('Akta 1958'). Permohonan saman pemula plaintif untuk deklarasi telah ditolak dengan kos oleh Mahkamah Tinggi dan justeru itu rayuan ini dikemukakan. Plaintif telah memetik autoriti-autoriti untuk menyokong penghujahannya bahawa perkataan 'pasangan' hendaklah ditafsirkan 'atas fakta setiap kes bagi memastikan bahawa keadilan dilaksanakan' dan menegaskan bahawa atas fakta kes ini dia adalah pasangan

si mati sepertimana dikehendaki di bawah s 6(1)(b) Akta 1958. Defendan-defendan menjawab bahawa autoriti-autoriti yang disandarkan oleh plaintif memperlihatkan kewujudan perkahwinan adat resam manakala dalam rayuan ini tidak pernah wujud satu perkahwinan secara adat resam ataupun statutori. Defendan-defendan menghujahkan bahawa plaintif bukan pasangan kerana dia tidak dapat menunjukkan bahawa perkahwinannya kepada si mati telah dilangsungkan dan didaftarkan menurut ss 22 dan 27 Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta 1976'). Plaintif menegaskan bahawa dalam mentafsirkan s 6(1)(b) Akta 1958, peruntukan-peruntukan ss 22(4) dan 27 Akta 1976 tidak terpakai manakala defendan-defendan mempertahankan bahawa peruntukan-peruntukan Akta 1976 adalah terpakai. Isu-isu yang perlu ditentukan dalam rayuan ini adalah sama ada dalam menentukan maksud perkataan 'pasangan' dalam s 6(1)(b) Akta 1958, yang merupakan Akta Parlimen yang terdahulu, mahkamah berhak mengimport dan menggunakan peruntukan ss 22(4) dan 27 Akta 1976, yang merupakan Akta Parlimen terkemudian dan sama ada plaintif berhak kepada separuh daripada harta pusaka si mati.

Diputuskan, menolak rayuan dengan kos:

(1) (oleh **Low Hop Bing HMR** dan **Abdul Malik Ishak HMR**) Syarat-syarat di bawah Akta terkemudian yang mungkin digunakan untuk tafsiran Akta terdahulu adalah ketat: kedua-duanya hendaklah merupakan undang-undang tentang perkara yang sama, dan bahagian Akta terdahulu yang ingin ditafsirkan 'hendaklah adil dan terbuka kepada pelbagai maksud'. Walau bagaimanapun, adalah jelas bahawa Akta 1958 dan Akta 1976 telah digubal untuk perkara yang berbeza. Selain itu perkataan 'pasangan' dalam Akta 1958 tidak 'adil dan terbuka kepada pelbagai maksud'. Justeru itu dua syarat-syarat yang ketat itu yang ditetapkan untuk menggunakan Akta terkemudian bagi mentafsirkan Akta terdahulu tidak dipatuhi. Oleh itu, peruntukan-peruntukan yang terkandung dalam ss 22(4) dan 27 Akta 1976 bukan alat bantu yang berguna untuk pentafsiran perkataan 'pasangan' dalam Akta 1958 (lihat perenggan 22, 23, 32, 55, 56 & 62).

(2) (oleh **Low Hop Bing HMR**) Pasangan-pasangan dalam autoriti-autoriti yang digunakan oleh plaintif pada hakikatnya telah melangsungkan perkahwinan adat resam, yang merupakan fakta penting yang tidak wujud dalam rayuan ini. Oleh itu, autoriti-autoriti tersebut dengan mudah dapat dibezakan dan tidak membantu plaintif. Dalam rayuan ini, plaintif dan si mati telah berkongsi satu hubungan yang kemudiannya menyebabkan mereka menjadi pemohon bersama untuk didaftarkan sebagai suami isteri, tetapi mereka belum lagi memasuki satu perkahwinan. Adalah relevan agar wujud satu perkahwinan sebelum seorang wanita layak menjadi isteri atau

pasangan. Selanjutnya, ketiadaan keterangan pakar menjadikan ia sukar untuk menentukan sama ada upacara mematahkan sikat pada masa penghormatan si mati boleh membentuk perkahwinan adat resam antara plaintif dan si mati. Berdasarkan fakta dan undang-undang, plaintif dan si mati tidak pernah menjadi suami dan isteri dan oleh itu plaintif di luar skop perkataan 'pasangan' dalam s 6(1)(b) Akta 1958 dan tidak berhak kepada separuh daripada harta pusaka si mati (lihat perenggan 38–40, 45).

(3) (oleh **Abdul Malik Ishak HMR**) Dalam rayuan ini penggunaan kamus dan sumber kesusasteraan lain adalah berguna untuk mentafsirkan perkataan 'pasangan'. Berdasarkan takrif-takrif yang diberikan dalam sumber-sumber tersebut adalah jelas bahawa plaintif tidak layak menjadi 'pasangan' si mati. Tiada perkahwinan dalam erti kata sebenar antara plaintif dan si mati. Meskipun plaintif tidak berjaya dalam rayuan ini dia telah mendapat ganjaran daripada si mati (lihat perenggan 63–68, 71 & 77).

(4) (oleh **Selventiranathan HMR**) Di bawah Akta 1976 semua perkahwinan di kalangan bukan Muslim yang dimasuki selepas tarikh itu hendaklah secara mandatori mematuhi peruntukan-peruntukan Akta tersebut bagi tujuan diakui sebagai perkahwinan sah dari segi undang-undang dan berikutan itu diberikan status pasangan ke atas pihak kepada perkahwinan tersebut. Oleh sebab plaintif tidak menjadi isteri si mati menurut Akta 1976 dia tidak berhak menjadi pasangan si mati bagi tujuan Akta 1958 (lihat perenggan 81 & 84).]

Notes

For cases on intestacy, see 11 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2322–2334.

Cases referred to

Attorney-General v Clarkson [1900] 1 QB 156, CA (refd)

Beh Lee Liang v Chew Sah Suak @ Chew Sar San & Anor [1995] 4 MLJ 397; [1996] 1 CLJ 173, HC (refd)

Camille and Henry Dreyfus Foundation Inc v Inland Revenue Commissioners [1954] 1 Ch 672, CA (refd)

Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 2 KB 403, CA (refd)

CCR and DJR (Infants), Re (1962) NZLR 561 (refd)

Chandris v Isbrandtsen-Moller Co Inc [1951] 1 KB 240 (refd)

Chong Sin Sen v Janaki a/p Chellamuthu (suing as widow of Muniappa Pillai a/l Maritha Muthoo, deceased on behalf of herself and the dependants of the deceased) [1997] 5 MLJ 441; [1997] 2 CLJ 699 (distd)

Gaslight and Coke Company, The v Hardy (1886) 17 QBD 619, CA (refd)

Grill v The General Iron Screw Collier Company (Limited) [1865-6] 1 LR CP 600 (refd)
Inland Revenue Commissioners v Butterley Co Ld [1955] 1 Ch 453; [1955] 2 WLR 785, CA (refd)
John Walsh Ltd v Sheffield Corporation, Tranter v Same [1957] 1 WLR 1074, CA (refd)
Joremi bin Kimin & Anor v Tan Sai Hong [2001] 1 MLJ 268; [2001] 1 CLJ 526, CA (distd)
K v JMP Co Ltd [1975] 1 All ER 1030, CA (refd)
Macmanaway and in re The House of Commons (Clergy Disqualification) Act 1801, In re [1951] AC 161, PC (folld)
Malaysia Shipyard and Engineering Sdn Bhd v Bank Kerjasama Rakyat Malaysia Bhd [1985] 2 MLJ 359; [1985] CLJ (Rep) 206, SC (refd)
Mandla (Sewa Singh) and another v Dowell Lee and another [1983] 1 QB 1, CA (refd)
Marquis Camden v Commissioners of Inland Revenue [1914] 1 KB 641, CA (refd)
McVittie v Bolton Corporation [1945] 1 KB 281, CA (refd)
Ormond Investment Co Ltd v Betts [1928] AC 143, HL
R v Peters (1886) 16 QBD 636 (refd)
Rignell (Inspector of Taxes) v Andrews [1990] STC 410 (refd)
Ripon (Highfield) Housing Confirmation Order 1938, White and Collins v Minister of Health, In re [1939] 2 KB 838 (refd)
Rodham Home, Esq v Right Honourable Charles Earl Camden and others (1795) 2 ER 6 Brown 203 (refd)
Tan Hui Guan, deceased (Phang Siew Fa v Aw Kim Siok), Re [2006] 3 MLJ 663, HC (refd)
Tan Sai Hong v Joremi Kimin & Anor [1997] 5 CLJ 614, HC (refd)
Ward v The Folkestone Waterworks Company (1890) 62 LT 321 (refd)

Legislation referred to

Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 s 14(1)(a)
Civil Law Act 1956 ss 7, 7(2), 8
Coal Industry (No 2) Act 1949 [UK] s 1(5)
Co-operative Societies Act 1948 s 32
Distribution Act 1958 s 6(1)(b), (d)
Fatal Accidents Acts 1846 to 1959 [UK]
Finance Acts 1937 and 1947 [UK]
Folkstone Waterworks Act 1858 [UK]
Folkestone Waterworks Act 1888 [UK]
Income and Corporation Taxes Act 1970 [UK] s 8(1)(a)
Income Tax Act 1918 [UK] s 37(1)(b)
Inheritance (Family Provision) Act 1971 s 3(1)
Insurance Act 1996 s 166(1)(a)

Law Reform (Marriage and Divorce) Act 1976 ss 22, 22(3), (4), 27
Merchant Shipping Acts (Amendment) Act 1862 [UK]
Rules of the High Court 1980 O 28 r 8
Subordinate Courts Rules 1980 O 14 r 21(1)

Appeal from: Originating Summons No S3–24–2248 of 2007 (High Court, Kuala Lumpur)

Colin Andrew Pereira (Albert Raja Xavier with him) (Goh Wong Pereira) for the appellant.
WP Leong (WP Leong & Partners) for the respondent.

Low Hop Bing JCA:

APPEAL

[1] This appeal by the appellant ('the plaintiff') arises from the decision of the Kuala Lumpur High Court in dismissing with costs the plaintiff's originating summons ('the OS').

[2] Vide the OS, the plaintiff seeks a declaration that she is entitled to one-half of the estate of one Liew Fatt Cheong ('the deceased') pursuant to, inter alia, s 6(1)(b) of the Distribution Act 1958 ('s 6(1)(b)').

FACTUAL BACKGROUND

[3] The plaintiff (NRIC No 790731-14-5772) is a businesswoman. In August 2002, she was managing a shop known as Kedai Aluminium & Cermin Shang Yee, with her mother. They manufactured fish tanks. It was during this time that the plaintiff met the deceased (NRIC No 520508-04-5007). They became good friends and met up regularly.

[4] Sometime in December 2002, romance blossomed between them. They became intimate.

[5] In 2003, the deceased took the plaintiff for Chinese New Year holidays in Penang where they spent three days together. In April 2003, they lived together at No 5511, New Green Park, 48000 Rawang, Selangor Darul Ehsan.

[6] Subsequently, at the deceased's behest, the plaintiff closed her own business, and worked in a company known as Ultiglobal Sdn Bhd. The deceased and the plaintiff also set up a business known as Lighting World Trading, at No 25, Jalan Bersatu 10, Taman Bersatu, Rawang.

A **[7]** The deceased and the plaintiff then went to Melaka to celebrate his mother's birthday, during which occasion the plaintiff met the deceased's siblings for the first time.

B **[8]** In 2004, the deceased and the plaintiff spent their Chinese New Year holidays together in Japan.

[9] In October 2004, the deceased and the plaintiff purchased an apartment known as No 2-4-10 Block 2 Taman Bahtera, Seri Bestari C Apartment, Hulu Bernam for RM116,880. They jointly took out a loan of RM105,000 from Public Bank Berhad and jointly made repayments of RM985 per month.

[10] In 2005, the deceased set up two other businesses, namely Ultilite D Electrical Trading and UGE Electrical Trading, in the plaintiff's name.

[11] In October 2005, the deceased refinanced his property held under HS (M) 1945, PT No 1537, Batu 18 1/4 Jalan Rawang, in the mukim of Rawang, district of Gombak, Selangor Darul Ehsan which was intended to be E their matrimonial home. Towards the construction of this property, the plaintiff paid approximately RM40,000 while another RM130,000 was withdrawn from the joint account of the deceased and the plaintiff in Public Bank Berhad and was utilised for the same purpose.

F **[12]** They then applied to the Gombak National Registration Department for the registration of their marriage. On or around 25 April 2006, they received a letter from the Department confirming that the date for registration of their marriage was 26 May 2006.

G **[13]** However, on 16 May 2006 ie 10 days prior to the date scheduled for the registration of their marriage, the deceased unexpectedly died of a heart attack.

H **[14]** The deceased was buried at Nilai Memorial Park. The plaintiff paid a sum of RM76,800 for the costs of twin burial plots and landscaping. The two burial plots were adjacent to each other. The second plot was intended for the plaintiff.

I **[15]** The 'wake' for the deceased was held between 16 May 2006 and 18 May 2006. On 18 May 2006, just before the cortege left for Nilai Memorial Park, upon the request of the deceased's family, the plaintiff performed the 'comb breaking' ceremony which, according to the plaintiff, signified that the plaintiff was entitled to 'break free'.

[16] The plaintiff has, in her possession, the deceased's personal belongings such as his birth certificate and passport.

[17] The deceased died intestate. The first defendant had obtained the letters of administration in which he was appointed the sole administrator of the deceased's estate, while the second defendant was the sole beneficiary.

[18] The deceased had inter vivos generously given the plaintiff approximately RM1m in cash and in kind, as confirmed by the plaintiff in para 12 of her affidavit in support and her learned counsel at the hearing of the instant appeal.

LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976 AND DISTRIBUTION ACT 1958

[19] Learned counsel Mr Colin Andrew Pereira (Mr Albert Raja Xavier with him) submitted that in construing s 6(1)(b), the provisions of s 22(4) and s 27 of the Law Reform (Marriage and Divorce) Act 1976 ('s 22(4) and s 27') are inapplicable. They sought support in:

(1) *In re Macmanaway and In re The House of Commons (Clergy Disqualification) Act 1801* [1951] AC 161 (PC);

(2) *Malaysia Shipyard & Engineering Sdn Bhd v Bank Kerjasama Rakyat (M) Bhd* [1985] CLJ (Rep) 206 (SC); and

(3) *Inland Revenue Commissioners v Butterley Co Ld* [1955] 1 Ch 453 (CA).

[20] Mr W P Leong, of counsel for the defendants, contended that s 22(4) and s 27 are applicable.

[21] The question which we are called upon to determine may be formulated as follows:

> In ascertaining the meaning of the word 'spouse' in s 6(1)(b) of the Distribution Act 1958 (which is an earlier Act of Parliament) is the court entitled to import and apply the provisions of s 22(4) and s 27 of the Law Reform (Marriage and Divorce) Act 1976 (which is a later Act of Parliament)?

[22] As a general rule, the law does not in all cases reject the deductions drawn from the language of later statutes as aids to the interpretation of an earlier Act. However, in *In Re Macmanaway* the Privy Council declined to resort to later Acts to fix the interpretation of the earlier Act, and held that the conditions under which a later Act may be resorted to for the interpretation of an earlier Act are strict: *both must be laws on the same subject,*

and the part of the earlier Act which it is sought to construe must be 'fairly and equally open to divers meanings': per Lord Radcliffe in *In re Macmanaway* p 177 para 2 line 5, applying *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 2 KB 403 at p 414; *Attorney-General v Clarkson* [1900] 1 QB 156, and *Ormond Investment Co Ltd v Betts* [1928] AC 143 at p 156.

[23] The above principles enunciated by Lord Radcliffe were cited with approval in the dissenting judgment of Wan Sulaiman SCJ (as he then was) in *Malaysia Shipyard & Engineering Sdn Bhd*. His Lordship declined to apply s 14(1)(a) of the Bank Kerjasama Rakyat Malaysia Berhad (Special Provisions) Act 1978 as an aid to interpret s 32 of the Co-operative Societies Act 1948 which is an earlier Act.

[24] In *Inland Revenue Commissioners v Butterfly Co Ltd*, at p 484, Jenkins LJ of the (UK) Court of Appeal held that the reference to profits tax in the proviso to s 1(5) of the Coal Industry (No 2) Act 1949 ie a later Act, could not be treated as if it were an amendment of the earlier provision in the (UK) Finance Acts 1937 and 1947, and that while the later enactment may be used for the purpose of resolving doubts or ambiguities, it does not alter the law.

[25] An Act of Parliament such as the (UK) Folkstone Waterworks Act 1858 could not be construed in the light of the (UK) Folkestone Waterworks Act 1888 passed thirty years after its date; and the provisions of the earlier Act could not be enlarged to meet the altered conditions brought about by the later Act: *Ward v The Folkestone Waterworks Company* at pp 339 and 340.

[26] In *Chong Sin Sen v Janaki a/p Chellamuthu (suing as widow of Muniappa Pillai a/l Maritha Muthoo, deceased on behalf of herself and the dependants of the deceased)* [1997] 5 MLJ 441; [1997] 2 CLJ 699 at p 708I, in interpreting ss 7 and 8 of the Civil Law Act 1956, Mohd Ghazali J (now FCJ) declined to consider the provisions of the Law Reform (Marriage and Divorce) 1976 which is a statute proceeding on different lines and containing different provisions which deal with a different subject matter.

[27] Reverting to the question for determination herein, s 6(1)(b), which provides for succession to intestate estates, merits reproduction as follows:

> Succession to intestate estates
>
> 6(1) After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section

4, be distributed in the manner or be held on the trusts mentioned in this section, namely — A

(a) ...

(b) If an intestate dies leaving no issue but a *spouse* and a parent or parents, the *surviving spouse* shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half. (Emphasis added.) B

[28] In this regard, the subject matter in the Distribution Act 1958 has been set out in the long title ie the distribution of intestate estates. C

[29] The Law Reform (Marriage and Divorce) Act 1976, enacted some 18 years later and enforced some six years thereafter ie from 1 March 1982, provides 'for monogamous marriages and the solemnisation and registration of such marriages; to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto'. D

[30] Section 22(4) specifically comes under 'solemnisation of marriages' and reads: E

(4) Every marriage purported to be solemnized in Malaysia shall be void unless a certificate for marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under subsection (3) has been delivered to the Registrar or Assistant Registrar, as the case may be. F

[31] Section 27 provides for the compulsory registration of a marriage after the appointed date, ie 1 March 1982, in the following words: G

27 Registration

The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act. H

[32] It is abundantly clear to us that the Distribution Act 1958 and the Law Reform (Marriage and Divorce) Act 1976 were enacted for different subject matters. Additionally, as shall be seen later in this judgment, the construction of the word 'spouse' in the 1958 Act is not 'fairly and equally open to divers meanings'. Hence, we are of the view that the two strict conditions set out by Lord Radcliffe in *In Re Macmanaway* have not been fulfilled. Therefore the provisions contained in s 22(4) and s 27 are not useful I

aids to the interpretation of the word 'spouse' in s 6(1)(b).

THE RELATIONSHIP

[33] It was canvassed for the plaintiff that the plaintiff was the spouse of the deceased as the word 'spouse' should be construed 'on the facts of each case to ensure that justice was done'. Reference was made to *Chong Sin Sen* and *Joremi bin Kimin & Anor v Tan Sai Hong* [2001] 1 MLJ 268; [2001] 1 CLJ 526 (CA).

[34] The defendants sought to distinguish both the aforesaid authorities, as they reveal the existence of a customary marriage, while in the instant appeal, there had never been a marriage at all, be it customary or statutory.

[35] We now proceed to consider the authorities cited for the plaintiff.

[36] First, in *Chong Sin Sen*, the plaintiff (the widow of the deceased in a road accident) filed a claim in June 1994 under ss 7 and 8 of the Civil Law Act 1956 on behalf of the deceased's estate. The defendant filed the defence in September 1994. On 14 May 1996, the defendant filed an application to strike out the plaintiff's claim under O 14 r 21(1) of the Subordinate Courts Rules 1980 on the ground that it was otherwise an abuse of the process of the court, as the plaintiff could not claim to be the wife of the deceased, her marriage being void, since she had only gone through a customary marriage on 31 August 1991, in the absence of a marriage certificate under the Law Reform (Marriage and Divorce) Act 1976. The plaintiff admitted the customary marriage which she insisted was a valid marriage and so she could make a claim under s 7(2) of the 1956 Act. The sessions court dismissed the application on the ground that it was premature to consider the matter and that it should be decided at the trial. On appeal to the High Court, Mohd Ghazali J (now FCJ) heard the application on its merits and held that the plaintiff had the locus standi to bring the action, essentially on, inter alia, the following grounds:

(a) While the customary marriage would seem to be void pursuant to the provisions of the 1976 Act, the plaintiff is not precluded from bringing an action under ss 7 and 8 of the 1956 Act. The plaintiff is a 'wife' within the contemplation of s 7(2) of the 1956 Act, applying the natural sense in the absence of a definition in that Act which does not provide that the term 'wife' should be confined to a woman whose marriage was solemnised and/or registered under any prevailing Act relating to marriage;

(b) The courts in interpreting a statute in which a word or phrase is not defined may assist themselves by any literary help they can find,

including the consultation of standard authors and reference to well-known and authoritative dictionaries: per Cozens-Hardy MR in *Camden (Marquis) v IRC* [1914] 1 KB 641 at p 647. Dictionaries are of valuable assistance where words are used in their ordinary sense: per Lord Coleridge in *R v Peters* (1886) 16 QBD 636 at p 641;

(c) Notwithstanding that the marriage has not complied with the provisions of the 1976 Act, the omission did not preclude her from bringing an action under the 1956 Act;

(d) The word 'wife' found in s 7(2) of the 1956 Act should not be restricted to a woman whose marriage has been solemnised and registered pursuant to the 1976 Act; and

(e) The respondent, having undergone a customary marriage with the deceased, is a 'wife' and hence has the locus standi to bring the action on behalf of the deceased's estate.

[37] The judgment in *Chong Sin Sen* was approved by this court in *Joremi Kimin & Anor* where the respondent and the deceased had contracted, in Singapore, a customary marriage which was not registered there or in Malaysia. The appellant contended that the marriage was not valid under the 1976 Act. The issue was whether the respondent had fulfilled the definition of the term 'wife' under s 7(2) of the 1956 Act. Haidar Mohd Noor JCA (later CJ (M)) adopted the reasoning and conclusion of the High Court in *Chong Sin Sen* and held that the respondent was the wife of the deceased within the contemplation of s 7(2) of the 1956 Act and, arising out of a motor vehicle accident, was entitled to claim for loss of dependency for herself and on behalf of her three children.

[38] Our analysis of the aforesaid two authorities reveals a common denominator ie the respective couple therein had in fact contracted a customary marriage, which is a fundamentally important fact absent in the instant appeal. It is therefore plain to us that these two authorities cited for the plaintiff are readily distinguishable and so are not helpful to the plaintiff.

[39] In the instant appeal, at best, the relationship in which the plaintiff and the deceased had mutually participated may be variously described as follows:

(a) In December 2002 (when romance blossomed) as intimate friends;

(b) In 2003 (when they had their Chinese New Year holidays in Penang) as travelling companions;

(c) In April 2003 (when they stayed together), as a cohabiting couple or as lovers;

(d) In 2004 (when they had their Chinese New Year holidays in Japan), as travelling companions;

(e) In 2004 and 2005 (when they purchased their properties and set up business together), as co-owners of properties and joint entrepreneurs; and

(f) In April 2006 (when they applied for registration of their marriage), as joint applicants to be registered as husband and wife.

[40] It is germane that there must be a marriage before a woman can qualify as a wife or spouse. 'Wife' is 'a married women esp in relation to her husband': *Concise Oxford Dictionary* (9th Ed). 'Wife' is 'a woman who has a hushand': *Jowitt's Dictionary of English Law* (Vol 2, 2nd Ed).

[41] And 'marriage' is:

(a) (1) the legal union of a man and a woman in order to live together and often to have children. (2) an act or ceremony establishing this union;

(b) the voluntary union for life of one man and one woman to the exclusion of all others ….. for the purpose of living together and procreating children … (*Concise Oxford Dictionary*)

(See also *Chong Sin Sen* per Mohd Ghazali J (now FCJ).

[42] The word 'spouse' is a term appropriate to married people in relation to each other as partners in a marriage, a husband to his wife or a wife to her husband: per Leicester J in *Re CCR and DJR (Infants)* (1962) NZLR 561 at p 563.

[43] The core issue pertaining to the meaning of the word 'spouse' has been judicially considered in *Re Tan Hui Guan, deceased (Phang Siew Fa v Aw Kim Siok)* [2006] 3 MLJ 663 (HC). The relevant facts reveal that on 13 October 2001, the plaintiff married the deceased. During his lifetime, and when he was a bachelor, the deceased had taken out two insurance policies and named the defendant as his nominee. At the time of the nomination, the deceased was engaged to be married to the plaintiff. The plaintiff's originating summons had sought, inter alia, a reasonable provision to be made out of the compensation under the deceased's insurance policies for, inter alia, her maintenance as a dependant of the deceased pursuant to s 3(1) of the Inheritance (Family Provision) Act 1971. The High Court was asked to decide, inter alia, whether at the time the defendant was named as the nominee in the deceased's insurance policies, the plaintiff was the deceased's 'spouse' within the meaning of that word in s 166(1)(a) of the Insurance Act 1996, which reads as follows:

Trustee of policy moneys

166

(1) A nomination by a policy owner, other than a Muslim policy owner, shall create a trust in favour of the nominee of the policy moneys payable upon the death of the policy owner, if —

(a) the nominee is his *spouse* … (Emphasis added.)

[44] In our view, Lau Bee Lan J has correctly held that although at the time of the nomination the deceased was engaged to be married to the plaintiff, and therefore a 'spouse to be', the plaintiff was not a spouse within the meaning of that word in s 166(1)(a). Her Ladyship relied on the plain and ordinary meaning of the word 'spouse' ie '(1) A married woman in relation to her husband; a wife, a bride. (2) A married man in relation to his wife; a husband; a bridegroom' (*The Shorter Oxford English Dictionary on Historical Principles* Vol 11 at p 2087). She added that 'spouse' can only mean a 'legal wife', as a result of which there was no spouse living at the time the deceased had named the defendant as the nominee, and so only the defendant (and not the plaintiff) was entitled to the compensation paid under the insurance policies as the sole beneficiary. The compensation was not subject to distribution under the Distribution Act 1958 and did not form part of the net estate under the Inheritance (Family Provision) Act 1971, for a reasonable provision to be made out for the plaintiff.

[45] Next, in the absence of expert evidence, we are unable to say that the 'comb breaking' ceremony at the 'wake' of the deceased could have constituted a customary marriage between the plaintiff and the deceased. No expert evidence had been adduced as the plaintiff had proceeded by way of the OS and not a writ. Further, the intention of the plaintiff and the deceased to apply for registration of their marriage meant that they had not contracted a marriage prior to their proposed registration, which unfortunately did not materialise due to divine intervention. On the facts and the law, the plaintiff and the deceased had never been constituted or instituted as husband and wife. They were never spouses. The plaintiff is therefore outside the ambit of the words 'spouse' or 'surviving spouse' in s 6(1)(b) of the 1958 Act and so is not entitled to one-half of the estate of the deceased. Much as we sympathise with the plaintiff relating the predicament in which she has been placed, we are however constrained to apply the law as it is and not as what it ought to be, according to the plaintiff.

[46] It is pertinent to refer to *K v JMP Co Ltd* [1975] 1 All ER 1030 (CA), where a man and a woman did not marry but merely lived together from 1964 until the man died in consequence of an accident in 1971. During their cohabitation, they had children born out of lawful wedlock. At pp 1033 and

1034, Cairns LJ lamented that although Parliament in 1934 extended the benefit of the Fatal Accidents Acts to illegitimate children, the Acts still made no provision for a woman who, outside matrimony, has lived with a man for years and mothered his children. At p 1037, Stephenson LJ said that the woman did not marry him and therefore could not claim compensation for his death, although their illegitimate children could. At p 1042, the third judge Graham J opined that the Fatal Accident Acts did not contemplate an unmarried woman, living with the deceased, being able to claim for compensation under the Acts.

CONCLUSION

[47] Given the plethora of authorities illuminating the meaning of the words 'spouse', 'husband and wife' and 'marriage', we are unable to find any error on the part of the court below in dismissing the plaintiff's originating summons. We had therefore dismissed the plaintiff's appeal and affirmed the decision of the court below, with costs of RM5,000 to the defendants. Deposit to the defendants on account of the fixed costs.

[48] My learned brothers Abdul Malik Ishak JCA and T Selventhiranathan JCA have also prepared their judgments respectively in support of mine, and arrived at the same conclusion.

Abdul Malik Ishak JCA:

[49] This is my supporting judgment to that of my learned brother Low Hop Bing JCA. In a well written judgment, His Lordship has lucidly set out the facts therein and I gratefuly adopt them in this supporting judgment.

[50] It is rather unfortunate that the deceased died ten days prior to the registration of his marriage to the plaintiff. There was no customary marriage contracted between them. And the nearest to establish the customary marriage was the 'comb-breaking ceremony' at the 'wake' of the deceased. But, unfortunately, since the matter proceeded by way of an originating summons and not by way of a writ action, no expert evidence was adduced. We are thus unable, in the absence of the expert evidence, to come to any conclusion that the 'comb-breaking ceremony' would indicate that there was indeed a customary marriage between the plaintiff and the deceased. Had the originating summons continued as if the cause or matter had been begun by writ under O 28 r 8 of the Rules of the High Court 1980 just like in the case of *Beh Lee Liang v Chew Sah Suak @ Chew Sar San & Anor* [1995] 4 MLJ 397; [1996] 1 CLJ 173, then expert evidence would likely have been adduced. It was not the case here. Incidentally, the deceased died intestate.

[51] In seeking a declaration that the plaintiff is entitled to one-half of the estate of the deceased, s 6(1)(b) of the Distribution Act 1958 has to be invoked. That section reads as follows (the relevant parts only):

> Succession to intestate estates
>
> 6 (1) After the commencement of this Act, if any person shall die intestate as to any property to which he is beneficially entitled for an interest which does not cease on his death, such property or the proceeds thereof after payment thereout of the expenses of due administration shall, subject to the provisions of section 4, be distributed in the manner or be held on the trusts mentioned in this section, namely —
>
> (b) if an intestate dies leaving no issue but a spouse and a parent or parents, the surviving spouse shall be entitled to one-half of the estate and the parent or parents shall be entitled to the remaining one-half;

[52] To succeed, the plaintiff must show that she is the 'spouse' or the 'surviving spouse' of the deceased under s 6(1)(b) of the Distribution Act 1958. But s 6(1)(d) of the same Act greatly impedes the plaintiff if she is not the 'spouse' of the deceased. If she is not, then the parent or parents, the surviving parent or parents shall be entitled to the whole of the estate.

[53] Then there is the requirement that the marriage has to be solemnised pursuant to s 22 of the Law Reform (Marriage and Divorce) Act 1976 and sub-s (4) of s 22 of the same Act enacts that 'every marriage purported to be solemnised in Malaysia shall be void unless a certificate of marriage or a licence has been issued by the Registrar or Chief Minister or a statutory declaration under sub-s (3) has been delivered to the Registrar or Assistant Registrar, as the case may be'. It must be emphasised that the Law Reform (Marriage and Divorce) Act 1976 which came into force on 1 March 1982 governs not only monogamous marriages but also the solemnisation and registration of such marriages. It applies to non-muslims only and it abolishes, once and for all, the practice of polygamy among non-muslims.

[54] The registration of a marriage under the Law Reform (Marriage and Divorce) Act 1976 is compulsory and it is provided for in s 27 of the same Act.

[55] It has been argued that in determining whether the plaintiff is the 'spouse' or the 'surviving spouse' of the deceased under s 6(1)(b) of the Distribution Act 1958 which is an earlier Act of Parliament, the court is entitled to import and vigorously apply the provisions of ss 22(4) and 27 of the Law Reform (Marriage and Divorce) Act 1976 which is a later Act of Parliament. Can the court do so?

[56] According to Tucker LJ in *Chandris v Isbrandtsen-Moller Co Inc* [1951] 1 KB 240, it is not strictly permissible to interpret a statute by referring to what has been done in subsequent statutes. But Lord Esher MR in *The Gaslight and Coke Company v Hardy* (1886) 17 QBD 619 (CA), at p 621 adopted the opposite line of approach. This was what he said:

> Now I will not say it is impossible to ascertain the interpretation of an Act passed in 1847 by reading an Act which was passed in 1871; if the Legislature has clearly put a construction on the former Act in the later Act, then for myself I think one may use the later Act.

[57] And this very passage was applied in *Camille and Henry Dreyfus Foundation Inc v Inland Revenue Commissioners* [1954] 1 Ch 672, at p 689. That was a case where the question that arose was whether a New York charity could claim the same tax exemption as a United Kingdom charity. And for this purpose the Income Tax Act 1918 particularly s 37(1)(b) had to be construed. Since there was ambiguity in this section, the court felt that recourse could be had to the construction placed by Parliament on that section by the later Finance Acts in 1923, 1924 and 1925.

[58] But this casual approach was frowned upon by Jenkins LJ in *Inland Revenue Commissioners v Butterley Co Ld* [1955] 2 WLR 785 (CA). which was a case involving profits tax of a nationalised coal company. This was what His Lordship said at pp 807–808:

> If the view I have formed to the effect that the interim income payments in this case are not, upon the true construction of the relevant provisions of the Finance Acts 1937 and 1947, chargeable to profits tax, is right, I find it impossible to hold that the references to profits tax in the proviso to s 1(5) of the Coal Industry (No 2) Act 1949, has made them so chargeable. Those references at most imply an assumption by Parliament that interim income payments under the Act of 1946 and that Act were subject to profits tax; but an assumption made in a later enactment as to the construction and effect of a given statutory provision is not to be treated as if it were an amendment of the earlier provision. Such legislative assumptions may sometimes be used for the purpose of resolving doubts or ambiguities, but do not alter the law.

[59] Again, in *Ward v The Folkestone Waterworks Company* (1890) 62 LT 321, at p 325, AL Smith J, was of the view that subsequent statutes cannot be used to construe an earlier statute.

[60] Jenkins LJ, however, in *John Walsh Ltd v Sheffield Corporation, Tranter v Same* [1957] 1 WLR 1074 (CA), at p 1079 said that:

> I think the effect of those cases is that it is only legitimate to call in aid later legislation to resolve some real ambiguity in the enactment which falls to be construed. Even then, even when it is legitimate to look at such legislation, no assistance can be derived from it, unless it can really be said that the provisions of the subsequent legislation would be wholly otiose and inept unless a particular view of the earlier legislation was taken.

[61] In *Grill v The General Iron Screw Collier Company (Limited)* [1865–66] 1 LR CP 600, the words 'wilful default' that appeared in s 299 of the repealed Merchant Shipping Act of 1854 were construed by referring to a similar expression that appeared in the Merchant Shipping Acts (Amendment) Act 1862.

[62] As demonstrated, there are two opposite views and opinions to the question posed. But I prefer the reasoning advanced by my learned brother Low Hop Bing, JCA in that it is not permissible to interpret the earlier Act of Parliament by reference to what has been done in the later Act of Parliament. At the end of the day, the duty to interpret an Act of Parliament, be it the earlier Act or the later Act, falls on the King's judges and no one else. Eyre CJ in *Rodham Home, Esq v Right Honourable Charles Earl Camden and others* (1795) 2 ER 6 Brown 203 once said that the duty of expounding Acts of Parliament devolves solely upon the 'King's temporal courts, and Your Lordships in the last instance.' I will, at a later stage, make reference to the Law Reform (Marriage and Divorce) Act 1976, once again.

[63] What is a 'spouse'? *Osborn's Concise Law Dictionary*, 10th Ed, edited by Mick Woodley defines 'spouse' at p 378 as:

> A husband or wife.

[64] And, at p 208 of the same dictionary, the words 'husband and wife' are defined as:

> At common law husband and wife were one person and, as Blackstone wrote, 'the husband is that one'. A woman's property passed to her husband at marriage and she could own no goods: even wages earned by working women were in law the property of her husband. Equity slightly ameliorated the position for those women wealthy enough to have trustees of real property. Not until the Married Women's Property Act of 1882 was a woman's property her own. One spouse cannot be compelled to testify against the other for the prosecution in criminal proceedings.

Stroud's Judicial Dictionary of Words And Phrases, 7th Ed, Vol 3, at p 2604 defines the word 'spouse' in this way:

A 'Spouse' in EEC Regulations 1612/68, art 10(1)(a) was held to refer only to a relationship based upon marriage, and could not be extended to cover other types of partner however stable the relationship (*The Netherlands v Ann Florence Reed (No 59/85)* [1987] CMLR 448).

The Human Rights Act 1998 requires the reference to 'the surviving spouse of the
B late partner' in para 2 of Sch 1 to the Rent Act 1977 as including a reference to a homosexual male partner: *Ghaidan v Mendoza* [2003] 2 WLR 478. (CA) (confirmed [2004] UKHL 30). This approach supersedes that in *Fitzpatrick v Sterling Housing Association*, which looked only at developments in the natural use of language and not at the non-discrimination requirements of the European Convention of Human Rights.

C

A person is the spouse of another for the purposes of the Witholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations 2002 (SI 2002/3078) whether or not the marriage was a marriage of convenience. (*R (Kimani) v Lambeth LBC* [2004] 1 WLR 272 (CA).

D

Black's Law Dictionary, 7th Ed, by Bryan A Garner, editor-in-chief, at p 1410 defines the word 'spouse' as:

One's husband or wife by lawful marriage; a married person.

E

[65] The use of dictionaries and other literary sources to assist in interpretation would be a wholesome exercise. In *Mandla (Sewa Singh) and another v Dowell Lee and another* [1983] 1 QB 1 (CA), the Court of Appeal held that the word 'ethnic' required a common racial characteristic, and in
F this connection, both Lord Denning MR and Kerr LJ referred to numerous dictionaries to justify their interpretation.

[66] It is certainly of immense help to refer to dictionaries. On this point, Lord Coleridge CJ in *R v Peters* (1885-66) 16 QBD 636, at p 641, aptly said:

G

I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books.

H

[67] In *Marquis Camden v Commissioners of Inland Revenue* [1914] 1 KB 641 (CA), at pp 647–648, Cozens-Hardy MR had this to say about reference to dictionaries:

I

It is for the court to interpret the statute as best they can. In so doing the court may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries, which refer to the sources in which the interpretation which they give to the words of the English language is to be found.

[68] MacKinnon LJ, in *In re Ripon (Highfield) Housing Confirmation Order 1938*, *White and Collins v Minister of Health* [1939] 2 KB 838, at p 847 made reference to the Oxford English Dictionary for the definition of the word 'park'. And referring to the same dictionary, Morton LJ in *McVittie v Bolton Corporation* [1945] 1 KB 281, at p 288, vigorously applied the meaning of the word 'rubbish' in his judgment.

[69] Obviously, the plaintiff does not qualify to be a 'spouse' of the deceased. There was no marriage, in the legal sense of the word, between the plaintiff and the deceased. The premature death of the deceased put an end to any speculation about the marital status of the plaintiff.

[70] According to the case of *Rignell (Inspector of Taxes) v Andrews* [1990] STC 410, for the purposes of s 8(1)(a) of the Income and Corporation Taxes Act 1970, a 'wife' is someone who has entered into a lawful marriage with a particular man, and does not include a so-called 'common law wife', however close or permanent the cohabitation might be. In our present case, the plaintiff is not even a 'common law wife' nor is she lawfully married to the deceased.

[71] I now revert to the Law Reform (Marriage and Divorce) Act 1976. The main feature of this Act is the requirement of registration which is provided for in Part IV of the said Act — from ss 27–34 thereto. *Tan Sai Hong v Joremi Kimin & Anor* [1997] 5 CLJ 614, was a case decided by me when I was on the High Court bench. That case concerned a dependency claim. In that case, the plaintiff had gone through a Chinese customary marriage in 1986 with the deceased. That Chinese customary marriage was carried out in haste to accommodate the wishes of the deceased's dying mother. The parties did not register the marriage but they nevertheless believed that they were married and what was of crucial importance was that they cohabited as husband and wife. At pp 620–621 of the report in *Tan Sai Hong*'s case, this was what I said:

> Using *Chan Chin Ming & Anor v Lim Yok Eng* as a leverage it was argued that the plaintiff was not the wife nor the widow of the deceased and, consequently, she was not entitled to claim loss of support under s 7 of the Civil Law Act. Now, evidence was led through the plaintiff that she went through a Chinese customary marriage in 1986 with the deceased in the house of the deceased's brother in Singapore and followed by a prayer ceremony, Chinese style of course, in Kota Tinggi, Johor. The parties then had their photographs taken. It was said that that Chinese customary marriage was carried out in haste to accommodate the wishes of the deceased's dying mother. The parties did not register the wedding but nevertheless they believed that they were married and of crucial importance they cohabitated as husband and wife. Section 104 of the Law Reform (Marriage And Divorce) Act 1976 enacts, inter alia, that a marriage contracted outside Malaysia shall be recognised as valid if it was contracted in a form required or permitted by the law

of the country where it was contracted. Factually, it was not disputed that both the plaintiff and the deceased were Malaysian citizens and this meant that the Law Reform (Marriage And Divorce) Act 1976 applies to them equally. The plaintiff did not produce any evidence to show that the form of ceremony of marriage she underwent in Singapore was in the form required or permitted by the law of Singapore. The plaintiff unabashedly admitted that she did not register the marriage, be it in Singapore or Malaysia, and consequently there was no marriage certificate issued by the authorities on both sides of the causeway. With this scenario in mind, the submission went two folds. Firstly, the purported marriage in Singapore was not valid. Secondly, the purported marriage in Malaysia contravened s 22(4) of the Law Reform (Marriage And Divorce) Act 1976 and shall be void.

Of pertinence to note would be the fact that both the plaintiff and the deceased freely consented to contract that Chinese customary marriage. There was no duress at all since duress would vitiate consent (*Geetha d/o Mundri v Arivanathan s/o Retnam* [1992] 2 SLR 422).

The parties in *T v O* [1993] 1 MLJ 168; [1994] 4 CLJ 593 went through a Chinese customary marriage. The marriage was not registered in accordance with s 22(4) of the Law Reform (Marriage And Divorce) Act 1976. The marriage produced a son and the plaintiff there sought custody, legal guardianship and maintenance. The court there had to consider two issues. One, whether the child was legitimate. Two, whether the marriage was void or voidable because of non-registration. In regard to the legitimacy of the child the court there held that by virtue of s 75(2) of the Law Reform (Marriage And Divorce) Act 1976 the child of a void marriage shall be treated as legitimate if at the time of the solemnisation of the marriage both or either spouse reasonably believed that the marriage was valid. In regard to that marriage, the court held that it was void ab initio. Applying *T v O* to the factual matrix of the present case, the plaintiff's Chinese customary marriage to the defendant was said to be void ab initio. In short, there was no marriage between the parties and the plaintiff was therefore barred from claiming loss of support under s 7 of the Civil Law Act. This was the gist of the arguments advanced by Mr Tan Jin Wah who acted for the defendants. Indeed, the plaintiff admitted under cross-examination that the Chinese customary marriage was not valid and that she was not the legal wife of the deceased.

[72] And continuing at pp 621–622 of the report in *Tan Sai Hong*'s case, this was what I said:

What kind of connotation must one give to the word 'wife'? Who is a 'wife' under s 7(2) of the Civil Law Act? Section 7(2) of the Civil Law Act merely says, inter alia, that an action shall be brought for the benefit of the wife. It does not seek to differentiate nor make a distinction between a lawful wife and unlawful wife. It is instructive to note that the Civil Law Act and the Law Reform (Marriage And Divorce) Act 1976 do not define the word 'wife'. The Law Reform (Marriage And Divorce) Act 1976 was promulgated to provide and protect monogamous marriages. Here, there was no evidence at all that the defendant had other wives other than the plaintiff. They both lived as far as the evidence goes harmoniously

as husband and wife and they had three children out of that union. Madam J Charidrika rightly pointed out that it would be a terrible injustice and against public policy to rule on the status of the deceased's marriage after his death. Section 34 of the Law Reform (Marriage And Divorce) Act 1976 sets out the effect of registration in this way: 'Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.'

It appears that s 34 of the Law Reform (Marriage And Divorce) Act 1976 saves the day for the plaintiff. In my judgment that Chinese customary marriage between the plaintiff and the deceased was valid and it cannot be declared invalid just because it was not registered. As a savings clause, s 34 of the Law Reform (Marriage And Divorce) Act 1976 sure comes in handy for those people who contracted Chinese customary marriages. Incidentally, this very section was not raised nor ventilated in *T v O* and had that section been applied the outcome might be different.

Interestingly, s 2 of the Income Tax Act 1967 (Act 53) defines a 'wife' to mean:

> a woman who (whether or not she has gone through any religious or other ceremony) is regarded by virtue of any law or custom as the wife of a man or as one of his wives.

and it recognises and gives credence to a customary wife, like the present plaintiff. Under the Income Tax Act 1967 (Act 53) a customary wife is recognised as a lawful dependant of the taxpayer. It follows as the night the day and it is beyond per adventure that for the purpose of a dependency claim, a customary wife like the plaintiff must be recognised as a lawful dependant. It is also interesting to note and indeed an eye opener that, on both sides of the causeway, the plaintiff, as the wife of the deceased, received ample recognition. The Singapore Government recognised the plaintiff as the deceased's wife and paid the deceased's CPF savings and union cooperative funds to her. While the Malaysian Government internationally known for its magnanimous gestures and open-mindedness through the Johore State Government recognised the plaintiff as the wife of the deceased and transferred the deceased's low cost house into her name. All these salient facts and the surrounding circumstances were not disputed nor challenged by the defendants. It was part and parcel of my judgment that the plaintiff was the wife of the deceased under s 7(2) of the Civil Law Act and, consequently, she was entitled to that dependency claim or loss of support. In that capacity she was also entitled to claim bereavement of RM10,000. This was my judgment and I so ordered accordingly.

[73] Factually speaking, *Tan Sai Hong*'s case is poles apart from our case. Here, there is no customary marriage at all. There, I invoked s 34 of the Law Reform (Marriage and Divorce) Act 1976 to assist the plaintiff there because of the existence of the Chinese customary marriage.

[74] It is comforting to know that *Tan Sai Hong*'s case was confirmed by the Court of Appeal on 21 December 2000 vide *Joremi bin Kimin & Anor v Tan Sai Hong* [2001] 1 MLJ 268; [2001] 1 CLJ 526.

A **[75]** Even though the plaintiff has not succeeded in this appeal, she has been justly rewarded by the deceased. On her own admission, she received approximately RM1m in cash and in kind from the deceased and I am sure that she would cherish the memory of her relationship with the deceased in the years ahead.

B

[76] Supportive of my learned brother Low Hop Bing JCA and for the reasons adumbrated above, I now make those orders as made by His Lordship.

C **T Selventhiranathan JCA:**

[77] I have had the benefit of reading the judgments in draft of my learned brothers Low Hop Bing JCA and Abdul Malik bin Ishak JCA and would
D agree with them in the main that our unanimous decision in dismissing the appeal of the appellant herein ('the plaintiff') was predicated on the ground that the plaintiff was unable to bring herself within the ambit of being the spouse of the deceased intestate to qualify to receive a one-half share in his estate pursuant to s 6(1)(b) of the Distribution Act 1958 ('the 1958 Act').
E

[78] The facts of the case have been canvassed in the judgments of my learned brothers and the provisions of the applicable laws have been reproduced in those judgments and they therefore need no repetition here.

F

[79] Central to the issue in this case was the fact that the deceased passed away before he and the plaintiff could undergo the performance of their marriage as required under the Law Reform (Marriage and Divorce) Act 1976 ('the 1976 Act'). It cannot be gainsaid that with the coming into force of that
G Act on the 1 March 1982, all marriages among non-Muslims intended to be entered into or in fact entered into after that date had to mandatorily conform with the provisions of that Act in order to be recognised as a valid marriage in law and consequentially as conferring the status of husband or wife ie a spouse, on a party to that marriage.

H

[80] With every respect to my learned brothers' opinions in their judgments in this case, I would approach the issue as I have done above and would therefore say that as the plaintiff had not become the wife of the deceased pursuant to the 1976 Act at the material time, she did not qualify
I as a spouse of the deceased for the purposes of the 1958 Act.

[81] In my view, the status of any person claiming to be a spouse of the deceased intestate under the 1958 Act will have to be determined under the law applicable to his or her marriage to the deceased. If under that law the

marriage is recognised as a valid one, then he or she will qualify to be recognised as a spouse under the 1958 Act. For example, customary as well as polygamous marriages, generally speaking, were recognised as valid marriages among non-Muslims prior to the coming into force of the 1976 Act. In those circumstances, the parties to those marriages would be recognised as spouses for the purposes of the 1958 Act.

[82] In the present case, the plaintiff would have to show that she and the deceased were married under the 1976 Act if she wanted to be recognised as the spouse of the deceased. However, she was unable to show that she had become the spouse of the deceased pursuant to any of the applicable provisions of that Act. *Ergo*, she could not be a spouse of the deceased within the meaning of the 1958 Act for the simple reason that it was only the 1976 Act which could have conferred the status of the spouse of the deceased on her and there had been no compliance with the provisions of that Act by the plaintiff and the deceased for that status to have been conferred on her.

[83] I therefore had no difficulty in arriving at the same decision as my learned brothers that the appeal of the plaintiff be dismissed with costs.

Appeal dismissed with costs.

Reported by Kohila Nesan